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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/002,190	11/28/2001	Myles A. Fisher	210271	2965

7590 08/12/2003

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EXAMINER

SLACK, NAOKO N

ART UNIT PAPER NUMBER

3635

DATE MAILED: 08/12/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	10/002,190	FISHER, MYLES A.
Examiner	Art Unit	
Naoko Slack	3635	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 21 April 2003.

2a) This action is FINAL.                            2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 1-23 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) Claim(s) 12-23 is/are allowed.

6) Claim(s) 1 and 4-11 is/are rejected.

7) Claim(s) 2 and 3 is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on 21 April 2003 is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11) The proposed drawing correction filed on \_\_\_\_\_ is: a) approved b) disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12) The oath or declaration is objected to by the Examiner.

#### Priority under 35 U.S.C. §§ 119 and 120

13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All b) Some \* c) None of:

1. Certified copies of the priority documents have been received.

2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.

3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) The translation of the foreign language provisional application has been received.

15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

#### Attachment(s)

1) Notice of References Cited (PTO-892)

2) Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) Information Disclosure Statement(s) (PTO-1449) Paper No(s) 2.

4) Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.

5) Notice of Informal Patent Application (PTO-152)

6) Other: \_\_\_\_\_.

## DETAILED ACTION

### ***Drawings***

The drawings are objected to under 37 CFR 1.83(a) because they fail to show element 30 as described in the specification on page 9, line 25 and page 10, line 3. Any structural detail that is essential for a proper understanding of the disclosed invention should be shown in the drawing. MPEP § 608.02(d). A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

### ***Double Patenting***

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1 and 4-11 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1 and 8-15 of U.S. Patent No. 6,260,317 B1 to Fisher in view of US Patent 5,160,566A to Ashby et al.

*Claim 1:*

As stated in claim 1, Fisher discloses a construction block comprising a resinous body formed from a pair of face portions with inwardly directed side portions, edge portions of the side portions in abutting relationship with and joined by a welded or adhesive seam defining an interior chamber; and a baffle having an outer periphery located within the interior space and disposed generally parallel with the pair of faces to form two separate areas within the interior chamber.

Fisher does not state that the baffle is located along the seam. However, Ashby et al. discloses a construction block comprising two separate halves permanently sealed at a peripheral seam (column 3, lines 8-12). A baffle is inserted and adhered parallel to the faces of the block (column 4, lines 7-11) at the seam of the faces. This construction offers benefits of thermal and sound insulation benefits (column 2, lines 19-22).

It would have been obvious for one of ordinary skill in the art at the time the invention was made to locate and attach Fisher's baffle at the seam as taught by Ashby et al. for benefits in thermal and sound insulation, which are concerns of Fisher (column 1, lines 27-30).

*Claims 4-10:*

Claims 4-10 of the present application are identical to claims 8-14 of Fisher.

*Claim 11:*

Claim 11 of the present application is identical to claim 15 of Fisher with the addition of a feature claimed in the alternative. Specifically, the phrase "or on one of the

face portions of the block" is not a required feature, and Fisher's claim 15 completely satisfies the structural requirements of applicant's claim 11.

***Allowable Subject Matter***

Claims 2 and 3 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Prior art discloses a construction block with a resinous body formed by a pair of face portions with inwardly directed side portions whose edge portions are joined by welding, and a baffle located within the interior space disposed parallel; however, prior art fails to show a baffle with an outer periphery that has an upwardly turned up edge. Claim 3 depends from claim 2.

Claims 12-23 are allowed. Prior art discloses a method of forming a construction block comprising the steps of providing first and second resinous body members, side portions of the first and second body members in abutting relationship, positioning the baffle within the interior space; however, prior art fails to disclose a baffle along the joined first and second sides portions. Claims 13-23 depend from claim 12.

***Prior Art Made of Record***

The following patents disclose construction blocks with baffles that are centrally attached; however, edge portions of the pair of joined face portions are not shown in abutting relationship: US Patents 2158089, 3294964, 5333427, 2167764, and 2532478.

***Contact Information***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Naoko Slack whose telephone number is (703) 305-0315. The examiner can normally be reached on Mon-Fri (6:00 am-2:30pm).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Carl D. Friedman can be reached on (703) 308-0839. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9326 for regular communications and (703) 872-9327 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1113.

  
NS  
August 7, 2003